HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R. No.6632 of 2006
Date of decision : 12.12.2006.

Jagdish Rai and others **.....Petitioners**

versus

Naresh Kumar and others **.....Respondents**

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.P.K.Ganga, Advocate for the petitioners.

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JUDGMENT

HEMANT GUPTA, J. (Oral)

The challenge in the present revision petition is to the order dated 9.11.2006, passed by the learned Executing Court, whereby objections filed by the petitioners in respect of execution of the judgment and decree dated 10.4.2002, were dismissed.

The plaintiff-petitioner filed a suit for declaration claiming ownership in respect of 2 kanal-15 marlas of land comprising in Khasra No.23/2. The plaintiff asserted such declaration, inter-alia, on the basis of adverse possession as well since the year 1952. The defendants in the written statement filed counter claim claiming possession of the land. Though the learned trial Court dismissed the suit, but the learned First Appellate Court partly decreed the suit filed by the plaintiff-petitioner as well as counter claim.

It was held that the plaintiffs are owner in possession of the land measuring 1K-7M comprised in Killa No.23/1, but while accepting the counter claim of the defendant Naresh Kumar, he was declared owner

of the land measuring 2K-2M comprising in Killa No.23/2/2. However, while granting a decree in favour of Naresh Kumar, it was held that if in the said area it is proved that three rooms were constructed by Budh Ram, predecessor in-interest of the plaintiff, the defendant Naresh Kumar shall not recover such area as may be form part of the said three rooms.

The defendant Naresh Kumar as decree holder in respect of possession of 2K-2 M of the land, sought execution of the decree. The petitioner herein, filed objections to the execution of said decree, inter-alia, on the ground that he is in possession since the year 1952 and that allotment in favour of Devi Lal, predecessor of the plaintiff, was cancelled. Therefore, the decree cannot be executed against the present petitioner.

The learned trial Court has found that the objections sought to be raised by the petitioner are the objections which were raised at the time of passing the judgment and decree dated 10.4.2002 and, therefore, the petitioner cannot be permitted to raise such objections in execution as well.

A perusal of the judgment and decree passed by the learned First Appellate Court shows that Issue No.1 was to the effect, whether the plaintiffs have been in possession of the suit property since the year 1952, whereas, Issue No.3 was to the effect, whether sale deed executed by the defendant on 20.5.1988 in respect of the suit property, is without any right, title or interest. Since the objections raised by the petitioner are the same as the pleadings raised in the suit, the learned trial Court rightly found that such objections cannot be raised by the petitioner in execution proceedings.

Learned counsel for the petitioner has relied upon "***1995 (1) PLR-293, S.P.Changalvaraya Naidu versus Jagannath"*** and ***"AIR 1996 S.C.-1819, Urban Improvement Trust Jodhpur versus Gokul Narain and another"***, to contend that a judgment or decree obtained by playing fraud on the Court is a nullity and nonest and such a judgment or decree can be challenged in any Court even in collateral proceedings. Such argument of the learned counsel for the petitioner is wholly misconceived. By merely stating that the decree has been obtained by playing fraud on the Court, will not render the decree as fraudulently obtained. As a matter of fact, the petitioner has not even used the word 'fraud' while filing the objections on 10.4.2002. The objections raised by the petitioner were the basis of seeking declaration from the Civil Court. Having failed in the suit, the petitioner cannot be permitted to raise same objections in the execution as well.

Consequently, I do not find any illegality or irregularity in the orders passed by the learned trial Court which may warrant interference by this Court in exercise of its revisional jurisdiction.

Dismissed.

(HEMANT GUPTA)
JUDGE

December 12, 2006
**mohinder*